

Benjamin Scott Miner
8633 La Mesa Blvd # 95
La Mesa, California 91942

FILED

DEC -9 2015

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *hy* DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BENJAMIN SCOTT MINER,
Plaintiff,

v.

Case No '15 CV 27 6 6 CAB MDD

BRANDON BLACK - CEO,
MIDLAND FUNDING LLC,

COMPLAINT

Defendant.

A.

JURISDICTION

1. This is an action that alleges that this court has federal question jurisdiction over this action pursuant to 28 U.S.C. § 1332 because:

a. The plaintiff is an individual residing in and a citizen of the state of California ;

b. The defendant is a corporation organized and existing under the laws of the State of California with its principle place of business in San Diego , CA .

c. There is a complete diversity of citizenship between plaintiff and the defendant.

B

DEFINITIONS

2. The plaintiff, Benjamin S. Miner is a "consumer" as defined by 15 U.S.C. § 1692a(3), as "any natural person obligated or allegedly obligated to pay any debt."

3. The defendant, Midland Funding, LLC is a "debt collector" as defined by 15 U.S.C. § 1692a(6) as "any person who regularly collects or attempts to collect debts owed to another person."

instrumentality of interstate commerce or the mails in any business the principle purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, any debts owed or due or asserted to be owed or due to another."

C.

STATEMENT OF THE CASE

4. On 05/25/2015, The plaintiff obtained a copy of his credit report from Equifax Information Services, Experian Information Solutions, and Trans Union Corporation which revealed that

("defendant") had placed an entry on plaintiffs credit report which communicated that plaintiff allegedly had an account in default with the defendant in the amount of \$ 152.00 through assignment from ^{the original} Creditor dated 02/26/2014. See Exhibit A.

5. On June 23, 2015, the defendant took receipt of plaintiffs "Notice of Relief", requesting the defendant validate the alleged debt pursuant to the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692g(a) and 1692g(b), through certified mail receipt which is numbered 70081830000450345325 and attached as Exhibit B. It should be noted that the defendant refused to respond to plaintiffs validation request.

D.

CLAIM ONE

6. The plaintiff asserts that defendant violated section 15 U.S.C. § 1692e(2)(A) of the Fair Debt Collections Practices Act when the defendant reported to Equifax Information Services, Experian Information Solutions, and Trans Union Corporation that the plaintiff is in default with the defendant in the amount of \$152.00 through assignment from the original creditor. See Exhibit A

7. Snyder v. Gordon, 2012 U.S. Dist LEXIS 120659, (9th Cir.) which states, " The FDCPA prohibits the false representation of the

1 "character, amount, or legal status" of any debt. § 1692e(2)(A).

2 A misstatement of a debt need not be knowing or intentional to create
3 liability under this section. Clark, 460 F.3d at 1176."

4 8. The defendant intended to manipulate the plaintiff by
5 falsely representing that the alleged debt which is a violation of the
6 Fair Debt Collections Practices Act ("FDCPA"). This constitutes a
7 vilation of the "Act" as a matter of law.

8 9. The plaintiff hereby seeks statutory damages in the amount
9 of \$1,000.00 for the defendants violation of 15 U.S.C. § 1692e(2)(A)
10 of the ("FDCPA").

11 E. CLAIM TWO

12 10. The plaintiff asserts that defendant violated section 15
13 U.S.C. § 1692e(8) of the Fair Debt Collections Practices Act when the
14 defendant communicated false information concerning the alleged debt
15 that the plaintiff never owed to the defendant, nor had the alleged debt
16 been assigned to the defendant. The defendant communicated to Equifax
17 Information Services, Experian Information Solutions, and Trans Union
18 Corporation false information, stating that the defendant had been
19 assigned to collect said debt from the plaintiff, and the plaintiff
20 was in default for \$ 152.00 to the defendant. See Exhibit A.

21 11. Nelson v. Equifax Information Services, LLC. 522 F. Supp. 2d
22 1222 (9th Cir. 2007) states, "in order to sustain a section 1692e(8)
23 claim, a party must show that a debt collector communicated or
24 threatened to communicate credit information which they knew or should
25 have known was false, including failing to communicate that debt was
26 disputed". Midland Funding, LLC never had a valid assignment
27 authorizing them to pursue and report to credit bureaus alleged debts

1 associated with the plaintiff.

2 11. Plaintiff hereby seeks statutory damages in the amount of
3 \$1,000.00 for the defendants violation of 15 U.S.C. § 1692e(8) of the
4 ("FDCPA").

5 F.

CLAIM THREE

6 12. Plaintiff asserts that defendant violated section 15 U.S.C.
7 § 1692e(10) of the Fair Debt Collections Practices Act when the defendant
8 used false and deceptive means to attempt to collect a debt from the
9 plaintiff. By communicating false information, the defendant attempted
10 to gain an advantage of an unsophisticated consumer through ~~false~~
11 srepresentation.

12 13. Heathman v. Portfolio Recovery Assocs., LLC, U.S. Dist. Lexis
13 27057 (9th Cir. 2013) states, " A debt collector violates section
14 1692e(10) if it 'use[s]... a false representation or deceptive means
15 to collect or attempt to collect any debt or to obtain information
16 concerning a consumer ('a debt collectors representation that a debt is
17 owed to it when in fact is not, amounts to a misrepresentation barred
18 by the ("FDCPA")."

19 14. Plaintiff hereby seeks statutory damages in the amount of
20 \$1,000.00 for the defendants violation of 15 U.S.C. § 1692e(10) of the
21 ("FDCPA").

22 G.

CLAIM FOUR

23 15. Plaintiff asserts that defendant violated section 15 U.S.C.
24 § 1692e(12) of the Fair Debt Collections Practices Act when the
25 defendant communicated the false representation that the alleged account
26 was turned over to Midland Funding, LLC for value to Equifax Information
27 Services, Experian Information Solutions, and Trans Union Corporation .

1 See Exhibit A. The defendant never received assignment to pursue or
2 report to credit bureaus alleged debts associated with the plaintiff.

3 16. Fortunato v. Hop Law Firm, LLC, U.S. Dist. LEXIS 152712
4 (9th Cir. 2012) states, "Section 1692e(12) prohibits " The false
5 representation or implication that accounts have been turned over to
6 innocent purchasers for value", when determining whether a
7 misrepresentation in a debt collection has been made, the court must
8 apply the "least sophisticated debtor" standard and make a determination
9 as to whether the debt would be "deceived or misled by the
10 misrepresentation", quoting Wade v. Reg'l Credit Ass'n, 87 F. 3d 1098,
11 1098-100 (9th Cir. 2006).

12 17. The plaintiff hereby seeks statutory damages in the amount of
13 \$1,000.00 for the defendants violation of 15 U.S.C § 1692e(12) of the
14 ("FDCPA").

15 H.

CLAIM FIVE

16 18. Plaintiff asserts defendant violated section 15 U.S.C. §
17 1692f(1) of the Fair Debt Collections Practices Act when the defendant
18 used unconscionable means to attempt to collect an alleged debt by
19 reporting to Equifax Information Services, Experian Information
20 Solutions, and Trans Union Corporation that Midland Funding, LLC
21 had obtained legal permission, documented by a valid assignment that
22 the plaintiff was now in default with a debt owed to the defendant with
23 a debt owed to the defendant with the attempt to force the plaintiff
24 to pay the \$ 152.00 allegedly owed.

25 19. Sukiasyan v. OCS Recovery Inc., U.S. Dist. LEXIS 29877
26 (9th Cir. 2013) states, "a debt collector may not use unfair or
27 unconscionable means to collect or attempt to collect any debt.

20. Without limiting the general application of the foregoing, the following conduct is a violation of this section: (1) The collection of any amount (including any interest fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law." Minus the agreement to collect on the attempted debt, the defendant is in direct violation of this section.

21. Plaintiff hereby seeks statutory damages in the amount of \$1,000.00 for the defendants violation of 15 U.S.C. § 1692f(1) of the ("FDCPA").

I. CLAIM SIX

22. The plaintiff asserts that defendant violated section 15 U.S.C. § 1692g(b) of the Fair Debt Collections Practices Act when he refused to respond to plaintiffs validation request. The defendant took receipt of plaintiffs "Notice of Administrative Remedy" and requested that the defendant provide the original creditors name, address, and verification of the alleged assignment or documents that gives Midland Funding, LLC the legal right to pursue and report to credit bureaus alleged debts associated with the plaintiff. The defendant took receipt of plaintiffs request for validation through certified mail receipt # 70081830000450345325 , which is attached as **Exhibit B** .

23. Danaher v. Northstar Location Servs., U.S. Dist. LEXIS 77606 (9th Cir. 2013) states, " If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed

1 portion thereof, until the debt collector obtains verification or
 2 judgement, or name and address of the original creditor, is mailed to
 3 the consumer by the debt collector." By Midland Funding, LLC refusing
 4 to communicate with the plaintiff regarding the original creditor and
 5 the alleged assignment or documents that granted the defendant the
 6 right to report to the credit reporting agencies that the defendant
 7 legally obtained the alleged debt. The defendant is in violation of
 8 section 1692g(b).

9 24. The plaintiff hereby seeks statutory damages in the amount
 10 of \$1,000.00 for the defendants violation of 15 U.S.C. § 1692g(b) of
 11 the ("FDCPA").

12 J. DAMAGES

13 25. 15 U.S.C. § 1692k - Civil Liability - (a) Amount of Damages
 14 - Except as otherwise prohibited by this section, any debt collector
 15 who fails to comply with any provision of this title [15 USCS §§ et seq]
 16 with respect to any person is liable to such person in an amount equal
 17 to the sum of:

18 (2)(A) in the case of any action by an individual, such additional
 19 damages as the court may allow, but not exceeding \$1,000.00.

20 K. REQUESTED RELIEF

21 CLAIM ONE: A violation of 15 U.S.C. § 1692(2)(A) of the ("FDCPA")
 22 is \$1,000.00 for the false representation of debt reported to Equifax
 23 Information Services, Experian Information Solutions, and Trans Union
 24 Corporation.

25 TOTAL DAMAGES: + \$3,000.00
 26
 27

1 CLAIM TWO: A violation of 15 U.S.C. § 1692e(8) of the ("FDCPA") is
 2 \$1,000.00 for submitting false information to each of the three credit
 3 reporting agencies Equifax Information Services, Experian Information
 4 Solutions, and Trans Union Corporation by the defendant.

5 TOTAL DAMAGES: + \$3,000.00

6 CLAIM THREE: A violation of 15 U.S.C. § 1692e(10) of the ("FDCPA") is
 7 \$1,000.00 for the false communication by the defendant to Equifax
 8 Information Services, Experian Information Solutions, and Trans Union
 9 Corporation.

10 TOTAL DAMAGES: + \$3,000.00

11 CLAIM FOUR: A violation of 15 U.S.C. § 1692e(12) of the ("FDCPA") is
 12 \$1,000.00 for the false representation by the defendant regarding the
 13 plaintiffs alleged debt reported to Equifax Information Services,
 14 Experian Information Solutions, and Trans Union Corporation.

15 TOTAL DAMAGES: + \$3,000.00

16 CLAIM FIVE: A violation of 15 U.S.C. § 1692f(1) of the ("FDCPA") is
 17 \$1,000.00 for the unconscionable means used by the defendant to
 18 attempt to collect on a debt by the plaintiff. This includes reporting
 19 to the three major credit reporting agencies Equifax Information
 20 Services, Experian Information Solutions, and Trans Union Corporation
 21 of the unconscionable means to collect.

22 TOTAL DAMAGES: + \$3,000.00

23 CLAIM SIX: A violation of 15 U.S.C. § 1692g(b) of the ("FDCPA") is
 24 \$1,000.00 for refusing to validate the alleged debt that the defendant
 25 reported to the three credit reporting agencies, Equifax Information
 26 Services, Experian Information Solutions, and Trans Union Corporation.

27 TOTAL DAMAGES: + \$1,000.00

1 26. The total amount of damages requested by the plaintiff is
2 \$16,350.00.

3 27. The \$350.00 added is the court cost associated with this
4 action.
5

6 I Benjamin Miner , hereby declare under penalty of perjury in
7 the state of California , that the information stated above and any
8 attachments to this form is true and correct.

9
10 DATED: 07/24/2015

11 BY 

Benjamin Scott Miner
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EXHIBIT A

MIDLAND FUND

GE CAPITAL RETAIL BANK
Feb 26, 2014

Open

\$152

Account Details

Last Reported May 08, 2015
 Collection Agency MIDLAND FUND
 Original Creditor GE CAPITAL RETAIL BANK
 Status Open
 Opened Date Feb 26, 2014
 Closed Date -
 Responsibility Individual
 Balance \$152
 High Balance \$152
 Remarks Placed for collection

Creditor Contact Details

MIDLAND FUNDING LLC
 8875 AERO DR 200
 SAN DIEGO, CA
 92123
 (844) 236-1959

See something wrong?

Learn more about how to dispute items on your credit report.

CA BUS BUR

SCRIPPSHEALTH CHULA VISTA
Mar 02, 2015

Open

\$1,051

Account Details

Last Reported Apr 21, 2015
 Collection Agency CA BUS BUR
 Original Creditor SCRIPPSHEALTH CHULA VISTA
 Status Open
 Opened Date Mar 02, 2015
 Closed Date -
 Responsibility Individual
 Balance \$1,051
 High Balance \$1,050
 Remarks Placed for collection

Creditor Contact Details

CALIF BUSINESS BUREAU
 1711 S MOUNTAIN AVE
 MONROVIA, CA
 91017
 (626) 303-1515

See something wrong?

Learn more about how to dispute items on your credit report.

RCVL PER MNG

11 AT T Dec 03, 2014

Open

\$695

Account Details

Last Reported Jan 25, 2015
 Collection Agency RCVL PER MNG
 Original Creditor 11 AT T
 Status Open
 Opened Date Dec 03, 2014
 Closed Date -
 Responsibility Joint
 Balance \$695
 High Balance \$695
 Remarks Placed for collection

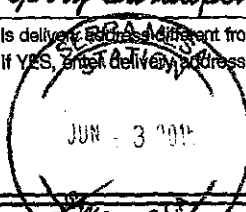
Creditor Contact Details

RECEIVABLES PERFORMANCE
 20816 44TH AVE WES
 LYNNWOOD, WA
 98036
 (866) 212-7408

See something wrong?

Learn more about how to dispute items on your credit report.

EXHIBIT B

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return this card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 		A. Signature Gerry Saradpon <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: Attn: Brandon Black, CEO Midland Credit Mgmt 8875 Aero Drive #200 San Diego, CA 92123		B. Received by (Printed Name) Gerry Saradpon	C. Date of Delivery
		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, print delivery address below: <input type="checkbox"/> No	
			
		3. Service <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Registered <input type="checkbox"/> Insured Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> C.O.D.	
2. Article Number (Transfer from service label)		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
		7008 1830 0004 5034 5325	

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540